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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

15 ASSOCIATION OF IRRITATED) Case No. 08-cv-05650 CW
16 RESIDENTS, an unincorporated association,)
17 Plaintiff,)
18 v.)
19 UNITED STATES ENVIRONMENTAL)
20 PROTECTION AGENCY, et al.,)
21 Defendants.)
22)

**STIPULATION and
ORDER**

1 WHEREAS, on December 18, 2008, the Association of Irritated Residents filed the
2 complaint in the above-captioned matter against the United States Environmental Protection
3 Agency et al. (collectively, “EPA”), alleging that EPA has failed to undertake certain
4 nondiscretionary duties under section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2);

5 WHEREAS, Plaintiff’s claims in this matter, other than the costs of litigation and
6 reasonable attorneys’ fees, were resolved by a Consent Decree entered by the Court on August
7 19, 2009, see Dkt. 24;

8 WHEREAS, Plaintiff and EPA wish to settle Plaintiff’s claims for costs of litigation in
9 this matter, including reasonable attorneys’ fees, in order to avoid unnecessary litigation and
10 without any admission of fact or law;

11 NOW THEREFORE, the parties, by and through their undersigned counsel, hereby
12 stipulate to the entry of an order that:

13 1. The United States shall pay, within 90 days, \$11,500 to the Center on Race,
14 Poverty & the Environment by electronic funds transfer in accordance with instructions provided
15 to Defense counsel by Plaintiff’s counsel.

16 2. Any obligation of the United States to expend funds under this settlement
17 agreement are subject to the availability of appropriations in accordance with the
18 Anti-Deficiency Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to
19 require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act,
20 31 U.S.C. § 1341.

21 3. Payment pursuant to Paragraph 1 within 90 days of the date on which the Court
22 enters this Stipulation and Order (or after 90 days if Plaintiff accepts payment after that date)
23 will constitute full and final payment of costs of litigation, including reasonable attorneys’ fees,
24 incurred by Plaintiff in connection with this case prior to the Court’s entry of the Consent Decree
25 and in negotiating this Stipulation and Order. Upon payment within 90 days of the date on
26 which the Court enters this Stipulation and Order (or upon payment after 90 days if Plaintiffs
27 accept payment), Plaintiff releases the United States, including EPA, from any claims regarding
28 such fees and costs incurred by Plaintiff in connection with this case prior to the Court’s entry of
the Consent Decree and in negotiating this Stipulation and Order. The payment pursuant to

1 Paragraph 1 does not affect Plaintiff's right to seek to recover reasonable costs and attorneys'
2 fees that Plaintiff may incur to enforce the Consent Decree, nor does it affect the right of EPA to
3 oppose any such request for fees and costs, as provided in Paragraph 11 of the Consent Decree.

4. In the event the United States fails to pay the sum specified in Paragraph 1 within
5 90 days of the date on which the Court enters this Stipulation and Order, Plaintiff may file a
6 motion with the Court for its costs of litigation, including reasonable attorneys' fees. Such
7 motion shall be filed no later than 150 days after the date the Court enters this Stipulation and
8 Order. The parties agree that, in litigation over such fee application, the United States reserves
9 any defenses it may have to a fee application.

10 Respectfully submitted,

11 **COUNSEL FOR DEFENDANTS:**

12 Dated: October 26, 2009

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

14 /s/ Rochelle L. Russell
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23 **COUNSEL FOR PLAINTIFF:**

24 Dated: October 26, 2009

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PURSUANT TO STIPULATION, IT IS SO ORDERED. The Case Management

Conference set for 12/15/09 is vacated.

10/27/09

28 Dated: _____



Hon. Claudia Wilken
United States District Court Judge